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36 UNITED STATES DISTRICT COURT
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38 NORTHERN DISTRICT OF CALIFORNIA
39
40 SAN FRANCISCO DIVISION

41 SUN GROUP U.S.A. HARMONY CITY, INC.,

42 No. 3:17-cv-02191-SK

43 Plaintiff,

44
ADMINISTRATIVE MOTION FOR
45 **LEAVE TO FILE FORMAL MOTION**
46 **TO COMPEL CRRC TO MAKE A**
47 **DESIGNATION UNDER RULE 30(B)(6)**

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49 v.
50 CRRC CORPORATION LTD,
51 Defendant.

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53 **Judge: Magistrate Sallie Kim**

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NOTICE OF ADMINISTRATIVE MOTION AND MOTION

TO THE COURT, ALL PARTIES, AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on a date, time, and manner to be set by the Court, in the Courtroom of the Honorable Sallie Kim, at Courtroom C, 15th Floor, 450 Golden Gate Ave., San Francisco, CA 94102, Plaintiff Sun Group U.S.A. Harmony City, Inc. (“Plaintiff” or “Sun Group”) will, and hereby does, move the Court under Local Rule 7-11 for an order granting Sun Group leave to file a Rule 37(a)(3)(B)(ii) motion addressing CRRC’s failure to make a designation under Rule 30(b)(6), under the procedures set forth in Local Rule 7.

I. INTRODUCTION

Sun Group has long been concerned that CRRC will not participate in discovery, and will therefore withhold relevant facts and testimony from Sun Group, while at the same time using its unfettered access to its own information to craft its defense and trial testimony. Among the discovery Sun Group seeks to prevent this unfair result is a Federal Rule of Civil Procedure 30(b)(6) deposition of CRRC itself, encompassing both its discovery conduct and substantive matters. For example, Sun Group seeks to understand how CRRC stores data given its production to date of very few emails and other electronically stored data. CRRC has refused to make any corporate representative available.

Sun Group believes a true deposition on both discovery and substance is essential for it to receive a fair trial. Sun Group further believes that the evaluation of this matter requires a full and fair chance for each side to present relevant facts and legal argument by virtue of a Rule 37(a)(3)(B)(ii) motion under the procedures set forth in Local Rule 7. Sun Group therefore respectfully requests leave to file such a motion.

II. FACTS

A. THE JOINT LETTER

The parties previously addressed CRRC’s refusal to designate deponents by joint letter. ECF No. 196. Sun Group raised concerns regarding the unprecedented requirement to proceed in China, and noted that CRRC should make someone—whether from the 101 countries in which CRRC operates or any other person anywhere in the world who consents to testify on its

1 behalf—available for a Zoom deposition. Sun Group also noted that the request implicated a
2 number of legal principles that could not be fully presented in the context of a joint letter. CRRC
3 opposed, representing to the Court that a “deposition” would be made available that would
4 “provide Sun Group the opportunity to elicit whatever evidence it believes it needs for its
5 remaining causes of action.” The Court denied Sun Group’s motion without prejudice on
6 September 9, 2021, noting CRRC’s claim that Plaintiff could “take depositions of Defendant’s
7 employees” through this process and allowing that “[i]f Plaintiff is unable to take the deposition
8 through the current process set forth in the Hague Convention or if the process yields results that
9 are substantially inferior in such a way that Plaintiff can show prejudice, Plaintiff may renew the
10 motion.” ECF No. 200.

11 **B. SUBSEQUENT EVENTS**

12 Since the Court’s order, Sun Group has endeavored to understand whether it is able to
13 take a Rule 30(b)(6) deposition in China through the “current process set forth in the Hague
14 Convention.” This is no simple matter, as Sun Group is not aware of a single instance in which a
15 civil litigant has been ordered to (or in fact has) done so. Thus, given CRRC’s ties to the
16 Ministry of Justice, Sun Group initially requested a meet-and-confer with CRRC that was
17 scheduled for Friday, September 17, 2021, but that CRRC cancelled. In an effort to maintain
18 momentum, Sun Group responded on September 20, 2021 to request CRRC’s availability, and
19 requested CRRC’s confirmation that seven routine deposition features would be permitted:

20 We would like to use that time to, among other things, discuss the
21 procedures in China. Specifically, please confirm that the following will be
22 allowed:

- 23 1. US style deposition, question/answer format by counsel and witness,
24 questions not provided in advance, except opening question for each topic asked
25 by judge
- 26 2. Time limit akin to US deposition (8 + hours with interpreter)
- 27 3. Full transcript of the testimony and/or video
- 28 4. Corporate designate would need to prepare and answer all questions
substantively. Could not refuse to answer based on lack of knowledge
5. With exception of privilege, all questions are fair game – i.e., a discovery
deposition not testimony subject to evidence rules
6. Exhibits may be used. Witness can be questioned on exhibits
7. Questions raised by counsel for Sun Group in English – interpreter would
be necessary

1 CRRC responded on September 29, 2021, but addressed only three of the seven topics.¹
2 As to topic 1, whether Sun Group’s counsel will be permitted to question the witness rather than
3 provide all questions in advance, CRRC said that “We do not believe the Chinese court will
4 proceed with a ‘US style deposition,’ and . . . our understanding that the proceeding is more akin
5 to a deposition on written questions, and all subject to the Chinese court’s discretion of how to
6 run the proceeding.” Even attempting such a procedure would require Sun Group to disclose its
7 work product in the form of a deposition outline, thus prejudicing it. CRRC did not, and still has
8 not, responded regarding time limit, transcript, use of exhibits, and ability to raise questions in
9 English. Sun Group can only take from CRRC’s silence that the answers to those questions
10 would further demonstrate the prejudice of embarking on a novel procedure here.

11 CRRC also served deposition notices to Sun Group’s principal, Jonathan Sun, on
12 September 29, 2021, confirming that it intended to avail itself of the full benefits of Federal Rule
13 of Civil Procedure 30 at the same time it refuses to offer those benefits to Sun Group.

14 Sun Group informed CRRC it intended to make this motion, and requested its consent on
15 October 1, 2021. CRRC refused to consent on October 5, 2021.

16 **III. ARGUMENT**

17 Sun Group believes that submitting to a deposition by written questions under the
18 auspices of Chinese law, rather than a Rule 30(b)(6) deposition is inconsistent with its discovery
19 rights in this action between litigants subject to this Court’s authority. *Epstein v. MCA*, 54 F.3d
20 1422, 1423 (9th Cir. 1995) (“The Federal Rules of Evidence creates a broad right of discovery
21 because wide access to relevant facts serves the integrity and fairness of the judicial process by
22 promoting the search for the truth.”) (citations omitted).

23 Subsequent events have made clear that the harm contemplated by the Court in its ruling
24 on the joint letter brief is inevitable. CRRC likens Chinese procedure to testimony on written
25 questions (not a discovery deposition), which would require Sun Group to disclose its work
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27 ¹ CRRC responded on topics 4 and 5 with statements that suggested the parties may be
28 able to reach agreement on those points.

1 product regarding deposition preparation *before* learning whether any testimony of any value—
2 let alone the fulsome testimony Sun Group is entitled to obtain under Rule 30—can be obtained
3 in the proceeding. *See Upjohn Co. v. United States*, 449 U.S. 383, 401 (1981) (placing the
4 highest protection on information that would reveal “the attorneys’ mental processes”);
5 *Fraunhofer-Gesellschaft Zur Förderung der Angewandten Forschung E.V. v. Sirius XM Radio*
6 *Inc.* (“*Sirius*”), No. 17-184-JFB-SRF, 2021 U.S. Dist. LEXIS 42648, at *5 (D. Del. Mar. 8,
7 2021) (denying foreign deposition where objecting party “has not adequately established that the
8 depositions of its German witnesses would be permitted to proceed to the full extent permitted
9 under the Federal Rules of Civil Procedure.”). CRRC refuses even to respond to Sun Group’s
10 inquiries regarding the length, transcript, use of exhibits, or ability to present questions in
11 English at such a procedure. Sun Group cannot independently ascertain these issues, as it is
12 unaware of any instance in the history of United States litigation in which a civil litigant has
13 successfully conducted a discovery deposition in China pursuant to Hague procedures.

14 Prejudice to Sun Group is also established by virtue of CRRC’s post-order attempt to
15 obtain a full Rule 30 deposition of Plaintiff, while at the same time refusing to designate
16 witnesses itself. This, too, prejudices Sun Group. *Sirius*, 2021 U.S. Dist. LEXIS 42648, at *5
17 (“courts generally conclude that it is unfair to restrict one party to the limited discovery
18 procedures available under the Hague Convention while the other party “takes full advantage of
19 the liberal discovery provisions of the Federal Rules.”).

20 Sun Group also believes that a full opportunity to submit briefing on this issue will assist
21 the Court by bringing forth sufficient evidence and law to make clear that CRRC’s failure to
22 make a designation is improper. Given the existence of Federal Rule 37(a)(3)(B)(ii) and Local
23 Rule 7, Sun Group respectfully requests that those procedures be used to resolve this discovery
24 dispute, which raises questions that cut to the very heart of United States litigation and
25 procedural due process and concern matters that are beyond the scope of a short letter. *See* Fed.
26 R. Civ. P. 83.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Sun Group respectfully requests leave to file a Rule
3 37(a)(3)(B)(ii) motion addressing CRRC's failure to make a designation under Rule 30(b)(6),
4 under the procedures set forth in Local Rule 7.

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6 Date: October 7, 2021

GREER, HERZ & ADAMS, L.L.P.

7
8 By: /s/

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2 **FILER'S ATTESTATION OF CONCURRENCE**

3 I, Frank Busch, pursuant to Local Rule 5-1(i), attest that I am counsel for Plaintiff Sun
4 Group U.S.A. Harmony City, Inc. As the ECF user and filer of this document, I attest that
5 concurrence in the filing of this document has been obtained from its signatories.

6
7 Date: October 7, 2021

**WAGSTAFFE, VON LOEWENFELDT,
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8
9 By: /s/
10 FRANK BUSCH
11 Attorney for Plaintiff
12 SUN GROUP U.S.A. HARMONY CITY, INC.

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